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DEPARTMENT OF COMMERCE

International Trade Administration

[C-570-982]

Utility Scale Wind Towers From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination

AGENCY: Import Administration, International Trade Administration, Department of Commerce

SUMMARY: The Department of Commerce preliminarily determines that countervailable subsidies are being provided to producers and exporters of utility scale wind towers from the People's Republic of China. For information on the estimated subsidy rates, see the "Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: [Insert Date of Publication in the Federal Register.]

FOR FURTHER INFORMATION CONTACT: Kristen Johnson or Patricia Tran, AD/CVD Operations, Office 3, Import Administration, U.S. Department of Commerce, Room 4014, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: 202-482-4793 and 202-482-1503, respectively.

SUPPLEMENTARY INFORMATION:

CASE HISTORY

On December 29, 2011, the Department of Commerce (the Department) received a countervailing duty (CVD) petition concerning imports of utility scale wind towers (wind towers) from the People's Republic of China (PRC) filed in proper form by the Wind Tower Trade Coalition (the Petitioner).¹ See Petition for the Imposition of Antidumping and

¹The following companies compose the Wind Tower Trade Coalition: Broadwind Towers, Inc., DMI Industries, Katana Summit LLC, and Trinity Structural Towers, Inc. See Petition at Volume I, Exhibit I-1.

Countervailing Duties Against Utility Scale Wind Towers from the People's Republic of China and the Socialist Republic of Vietnam (December 29, 2011) (Petition).² This investigation was initiated on January 18, 2012.³

In the Initiation Notice, the Department stated that it intended to rely on data from U.S. Customs and Border Protection (CBP) for purposes of selecting the mandatory respondents. See Initiation Notice, 77 FR 3449-50. On January 18, 2012, the Department released the results of a query performed on the CBP's database for calendar year 2011. See Memorandum to the File from Eric B. Greynolds, Program Manager, AD/CVD Operations, Office 3, regarding "Release of Query Results of Customs and Border Patrol Database" (January 18, 2012). Due to the large number of producers and exporters of wind towers in the PRC, we determined that it was not practicable to individually investigate each producer and/or exporter. We, therefore, selected the following two producers and/or exporters of wind towers to be mandatory respondents: CS Wind China Co., Ltd. and CS Wind Corporation (collectively, CS Wind) and Titan Wind Energy (Suzhou) Co., Ltd. and its affiliates (collectively, Titan Companies), the largest publicly identifiable producers and/or exporters of the subject merchandise.⁴ See Memorandum to Christian Marsh, Deputy Assistant Secretary for AD/CVD Operations, from Eric B. Greynolds, Program Manager, AD/CVD Operations, Office 3, and Patricia M. Tran, International Trade Analyst, AD/CVD Operations, Office 3, through Melissa G. Skinner, Director, AD/CVD

² The public version of the Petition and all other public versions and public documents generated in the course of this proceeding by the Department and interested parties are available to the public through Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS), located in Room 7046 of the main Commerce building.

³ See Utility Scale Wind Towers From the People's Republic of China: Initiation of Countervailing Duty Investigation, 77 FR 3447 (January 24, 2012) (Initiation Notice), and accompanying Initiation Checklist.

⁴ The companies are listed in alphabetical order and not listed based on export value/volume.

Operations, Office 3, regarding “Countervailing Duty Investigation: Utility Scale Wind Towers from the People’s Republic of China: Respondent Selection” (February 17, 2012).

On February 17, 2012, we issued the initial CVD questionnaire to the Government of the People’s Republic of China (the GOC) and selected mandatory respondents. We also issued a confirmation of shipment questionnaire on the same date to CS Wind and Titan Companies.

On February 24, 2012, we received CS Wind’s and Titan Companies’ response to the shipment questionnaire in which each company certified that it exported subject merchandise to the United States during the period of investigation (POI). On March 1, 2012, we received comments from Chengxi Shipyard Co., Ltd. (CXS) regarding respondent selection. On March 5, 2012, we responded to CXS explaining that respondent selection had already been decided in this investigation and that the Department would not be considering the company’s comments.

On March 9, 2012, the Department postponed the deadline for the preliminary determination by 65 days to no later than May 29, 2012.⁵

On April 3, 2012, we received initial questionnaire responses from CS Wind, Titan Companies, and the GOC. On April 4, 2012, we issued a deficiency questionnaire to the GOC regarding the provision of electricity for less than adequate remuneration (LTAR) and policy lending to the renewable energy industry and received the GOC’s response on April 18, 2012. On April 6, 2012, we issued a supplemental questionnaire to CS Wind and received the company’s response on April 30, 2012. On April 9, 2012, we received the GOC’s response to the appendix for the provision hot-rolled steel (HRS) for LTAR program. On April 11, 2012, we

⁵ See Utility Scale Wind Towers From the People’s Republic of China: Notice of Postponement of Preliminary Determination in the Countervailing Duty Investigation, 77 FR 14342 (March 9, 2012).

issued to the GOC a second supplemental questionnaire and received the government's response on May 2, 2012. On April 11, 2012, we also issued a supplemental questionnaire to Titan Companies and received their responses on April 27 and May 3, 2012.

On April 19, 2012, Petitioner filed deficiency comments with regard to the questionnaire responses filed by the GOC, CS Wind, and Titan Companies. On April 20, 2012, Petitioner filed a new factual information submission regarding HRS pricing data for the POI, and a new subsidy allegations submission alleging the provision of aluminum shapes for LTAR and the provision of steel flanges for LTAR. Subsequently, on April 27, 2012, the GOC filed a submission responding to the Petitioner's new subsidy allegations.

On May 3, 2012, CS Wind filed a rebuttal new factual information submission regarding HRS plate pricing data for the POI. Also, on May 3, 2012, we issued a second supplemental question to CS Wind and received the company's response on May 18, 2012.

On May 8, 2012, we rejected the Petitioner's new subsidy allegations submission because the allegations were untimely filed with the Department. See Memorandum to Melissa G. Skinner, Director, AD/CVD Operations, Office 3, from Patricia M. Tran, International Trade Analyst, AD/CVD Operations, Office 3, through Robert Copyak, Acting Program Manager, AD/CVD Operations, Office 3, regarding "Decision Memorandum Regarding Petitioner's New Subsidy Allegations" (May 8, 2012). On May 8, 2012, we also rejected the GOC's April 27, 2012, rebuttal submission regarding the Petitioner's new subsidy allegations. Additionally on May 8, 2012, the GOC submitted clarification information for a HRS producer. On May 9, 2012, we issued a second supplemental questionnaire to Titan Companies and received the company's response on May 18, 2012. Titan Companies submitted comments on May 9, 2012,

with regards to Petitioner's April 20, 2012, HRS plate benchmark submission.

On May 10, 2012, Petitioners filed comments on CS Wind's May 3, 2012, HRS plate benchmark pricing data submission. On May 11, 2012, CS Wind filed a second factual submission regarding a HRS producer/supplier and ocean freight rates, and submitted pre-preliminary determination comments. On May 16, 2012, the Department issued a third supplemental questionnaire to the GOC.

On May 17, 2012, Department officials met with counsel representing Petitioner regarding the HRS benchmark pricing data that they submitted on the record of the investigation.⁶ Additionally, on May 17, 2012, CS Wind filed a third factual submission with regard to HRS benchmark data.

On May 18, 2012, the Department received the following submissions: Titan Companies submitted ownership information for a HRS producer/supplier; CS Wind submitted a correction to a chart that was included in Attachment 3 of the company's May 17, 2012, submission on HRS benchmark data; and Petitioner filed pre-preliminary comments regarding the provision of HRS for LTAR program.

On May 22, 2012, Petitioner filed rebuttal comments on the benchmark data submitted by CS Wind on May 17, 2012. On May 23, 2012, we received the GOC's response to the Department's third supplemental questionnaire, in part. Specifically, the Department received the GOC's response to the electricity questions, but granted an extension to the GOC to respond

⁶ See Memorandum to the File from Patricia M. Tran, International Trade Analyst, AD/CVD Operations, Office 3, regarding "Countervailing Duty Investigation of Utility Scale Wind Towers from the People's Republic of China: Meeting with Counsel representing Wind Tower Trade Coalition (Petitioner)" (May 21, 2012).

to the questions regarding the tax offsets for research and development program; the GOC's response to those questions are due to the Department on May 30, 2012.

As noted, CS Wind and Titan submitted ownership information for HRS suppliers/producers on May 11 and May 18, 2012, 18 and 11 days, respectively, before the preliminary determination. Due to the proximity to the preliminary determination, the Department intends to address CS Wind's and Titan's submissions, including the question of whether or not these submissions were timely, after the issuance of the preliminary determination. All parties will be informed of the Department's decision with regard to CS Wind's and Titan's submissions and provided the opportunity to comment on it.

SCOPE OF INVESTIGATION

The merchandise covered by this investigation are certain wind towers, whether or not tapered, and sections thereof. Certain wind towers are designed to support the nacelle and rotor blades in a wind turbine with a minimum rated electrical power generation capacity in excess of 100 kilowatts and with a minimum height of 50 meters measured from the base of the tower to the bottom of the nacelle (i.e., where the top of the tower and nacelle are joined) when fully assembled.

A wind tower section consists of, at a minimum, multiple steel plates rolled into cylindrical or conical shapes and welded together (or otherwise attached) to form a steel shell, regardless of coating, end-finish, painting, treatment, or method of manufacture, and with or without flanges, doors, or internal or external components (e.g., flooring/decking, ladders, lifts, electrical buss boxes, electrical cabling, conduit, cable harness for nacelle generator, interior lighting, tool and storage lockers) attached to the wind tower section. Several wind tower

sections are normally required to form a completed wind tower.

Wind towers and sections thereof are included within the scope whether or not they are joined with non-subject merchandise, such as nacelles or rotor blades, and whether or not they have internal or external components attached to the subject merchandise.

Specifically excluded from the scope are nacelles and rotor blades, regardless of whether they are attached to the wind tower. Also excluded are any internal or external components which are not attached to the wind towers or sections thereof.

Merchandise covered by the investigation is currently classified in the Harmonized Tariff System of the United States (HTSUS) under subheadings 7308.20.0020⁷ or 8502.31.0000.⁸ Prior to 2011, merchandise covered by this investigation was classified in the HTSUS under subheading 7308.20.0000 and may continue to be to some degree. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive.

⁷ Wind towers are classified under HTSUS 7308.20.0020 when imported as a tower or tower section(s) alone.

⁸ Wind towers may also be classified under HTSUS 8502.31.0000 when imported as part of a wind turbine (i.e., accompanying nacelles and/or rotor blades).

SCOPE COMMENTS

In accordance with the Preamble to the Department's regulations (see Antidumping Duties; Countervailing Duties, 62 FR 27296, 27323 (May 19, 1997)), in the Initiation Notice, we set aside a period of time for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of publication of the Initiation Notice. On February 7, 2012, we received scope comments from the Petitioner.

The Department is evaluating the comments submitted by the Petitioner and will issue its decision regarding the scope of the antidumping (AD) and CVD investigations in the preliminary determination of the companion AD investigation, which is due for signature on July 26, 2012.⁹ Scope decisions made in the AD investigation will be incorporated into the scope of the CVD investigation.

INJURY TEST

Because the PRC is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Tariff Act of 1930, as amended (the Act), the International Trade Commission (the ITC) is required to determine whether imports of the subject merchandise from the PRC materially injure, or threaten material injury to, a U.S. industry. On February 17, 2012, the ITC published its preliminary determination finding that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from China of wind towers. See Utility Scale Wind Towers from China and Vietnam, Investigation Nos. 701-TA-486 and 731-TA-1195-1196 (Preliminary), 77 FR 9700 (February 17, 2012).

⁹ See Utility Scale Wind Towers From the People's Republic of China and the Socialist Republic of Vietnam: Postponement of Preliminary Determinations of Antidumping Duty Investigations, 77 FR 29315 (May 17, 2012).

APPLICATION OF THE CVD LAW TO IMPORTS FROM THE PRC

On October 25, 2007, the Department published Coated Free Sheet Paper From the People's Republic of China: Final Affirmative Countervailing Duty Determination, 72 FR 60645 (October 25, 2007) (Coated Paper from the PRC), and the accompanying Issues and Decision Memorandum (Coated Paper Decision Memorandum). In Coated Paper from the PRC, the Department found that

given the substantial difference between the Soviet-style economies and China's economy in recent years, the Department's previous decision not to apply the CVD law to these Soviet-style economies does not act as {a} bar to proceeding with a CVD investigation involving products from China.

See Coated Paper Decision Memorandum at Comment 6. The Department has affirmed its decision to apply the CVD law to the PRC in numerous subsequent determinations.¹⁰

Furthermore, on March 13, 2012, HR 4105 was enacted which makes clear that the Department has the authority to apply the CVD law to non-market economies (NMEs) such as the PRC. The effective date provision of the enacted legislation makes clear that this provision applies to this proceeding.¹¹

Additionally, for the reasons stated in the CWP Decision Memorandum, we are using the date of December 11, 2001, the date on which the PRC became a member of the World Trade Organization (WTO), as the date from which the Department will identify and measure subsidies in the PRC. See CWP Decision Memorandum at Comment 2.

¹⁰ See, e.g., Circular Welded Carbon Quality Steel Pipe From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances, 73 FR 31966 (June 5, 2008) (CWP from the PRC), and accompanying Issues and Decision Memorandum (CWP Decision Memorandum) at Comment 1.

¹¹ See HR 4105, 112th Cong. § 1(b) (2012) (enacted).

USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

Sections 776(a)(1) and (2) of the Act provide that the Department shall apply “facts otherwise available” if, inter alia, necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Section 776(b) of the Act also authorizes the Department to use as adverse facts available (AFA), information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

The Department’s practice when selecting an adverse rate from among the possible sources of information is to ensure that the result is sufficiently adverse “as to effectuate the statutory purposes of the AFA rule to induce respondents to provide the Department with complete and accurate information in a timely manner.”¹² The Department’s practice also ensures “that the party does not obtain a more favorable result by failing to cooperate than if it

¹² See Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan, 63 FR 8909, 8932 (February 23, 1998).

had cooperated fully.”¹³

Application of AFA: HRS Producers Are “Authorities”

As discussed below under the section “Programs Preliminarily Determined To Be Countervailable,” the Department is investigating the provision of HRS for LTAR by the GOC. We requested information from the GOC regarding the specific companies that produced the HRS that CS Wind and Titan Companies purchased during the POI. Specifically, we sought information from the GOC that would allow us to determine whether the producers are “authorities” within the meaning of section 771(5)(B) of the Act. In our original and supplemental questionnaires, we requested detailed information from the GOC that would be needed for this analysis.

For each producer in which the GOC was a majority owner, we stated that the GOC needed to provide the following information that is relevant to our analysis of whether that producer is an “authority.”

- Translated copies of source documents that demonstrate the producer’s ownership during the POI, such as capital verification reports, articles of association, share transfer agreements, or financial statements.
- The names of the ten largest shareholders and the total number of shareholders.
- The identification of any government ownership or other affiliations between the ten largest shareholders and the government.

¹³ See Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, H. Doc. No. 316, 103d Cong. 2d Session, at 870 (1994).

- Total level of state ownership of the company's shares and the names of all government entities that own shares in the producer.
- Any other relevant evidence the GOC believes demonstrates that the company is not controlled by the government.

For each producer that the GOC claimed was privately owned by individuals or companies during the POI, we requested the following.

- Translated copies of source documents that demonstrate the producer's ownership during the POI, such as capital verification reports, articles of association, share transfer agreements, or financial statements.
- Identification of the owners, members of the board of directors, or managers of the producers who were also government or Chinese Communist Party (CCP) officials or representatives during the POI.
- A statement regarding whether the producer had ever been a state-owned enterprise (SOE), and, if so, whether any of the current owners, directors, or senior managers had been involved in the operations of the company prior to its privatization.
- A discussion of whether and how operational or strategic decisions made by the management or board of directors are subject to government review or approval.

Finally, for producers owned by other corporations (whether in whole or in part) or with less-than-majority state ownership during the POI, we requested information tracing the ownership of the producer back to the ultimate individual or state owners. For such producers, we requested the following information.

- The identification of any state ownership of the producer's shares; the names of all government entities that own shares, either directly or indirectly, in the producer; the identification of all owners considered SOEs by the GOC; and the amount of shares held by each government owner.
- For each level of ownership, identification of the owners, directors, or senior managers of the producer who were also government or CCP officials during the POI.
- A discussion of whether and how operational or strategic decisions made by the management or board of directors are subject to government review or approval.
- A statement regarding whether any of the shares held by government entities have any special rights, priorities, or privileges with regard to voting rights or other management or decision-making powers of the company; a statement regarding whether there are restrictions on conducting, or acting through, extraordinary meetings of shareholders; a statement regarding whether there are any restrictions on the shares held by private shareholders; and a discussion of the nature of the private shareholders' interests in the company (e.g., operational, strategic, or investment-related).

In its questionnaire response on April 9, 2012, the GOC provided incomplete ownership information for all of the companies that produced HRS purchased by CS Wind and Titan Companies. The GOC provided the business registration for all of CW Wind and Titan Companies' input suppliers, but did not provide additional documentation, (e.g., capital verification reports, articles of association, or any other documents demonstrating the producers' ownership. For one producer only, it provided the articles of association, but this was still not

enough information to trace ownership back to the ultimate individual owners, as the questionnaire requested.¹⁴ Further, the GOC provided no information at all regarding the identification of owners, directors, or senior managers who were also GOC or CCP officials or representatives. The GOC stated that “it was unable to trace all ownership back to the ultimate individual or state owners for each and every input producer with some direct corporate ownership or less-than-majority state ownership, and for each level of ownership of these input producers during the POI in the limited time allowed for this questionnaire response.”¹⁵ For all of these producers, it provided none of the information requested in the standard “input producers” appendix, which the Department issues to determine the individual owners of producers and to determine the extent of GOC control, if any, over the producers.¹⁶ On April 11, 2012, we issued a supplemental questionnaire to the GOC requesting that it provide the requested ownership information for the HRS producers. We also requested that the GOC respond to the questions regarding the role, if any, that GOC and CCP officials and representatives had as owners, directors, or senior managers of the producers.¹⁷

In its May 2, 2012, response, the GOC did not provide any information regarding the role of GOC and CCP officials and representatives, nor did the GOC explain what efforts it undertook to obtain the requested information.

In addition to not providing all of the requested information regarding government and CCP officials and representatives, the GOC also declined to answer questions about the CCP’s

¹⁴ See GOC’s Provision of HRS Questionnaire Response (April 9, 2012) (GOC HRS Response) at Attachment 1 to 11.

¹⁵ See GOC HRS Response at 3.

¹⁶ *Id.*

¹⁷ See Department’s Second Supplemental Questionnaire to the GOC (April 11, 2012).

structure and functions that are relevant to our determination of whether the producers of HRS are “authorities” within the meaning of section 771(5)(B) of the Act. In its initial questionnaire response, the GOC asserted that HRS sheet and plate producers are not “authorities” within the meaning of applicable U.S. law or “public bodies” with the meaning of the WTO Agreement on Subsidies and Countervailing Measures. Additionally, the GOC stated that it does not “play a role in the ordinary business operations, including pricing and marketing decisions, of the domestic Chinese hot-rolled industry, including those in which the state holds an ownership interest.”¹⁸ The GOC argues that Chinese law prohibits GOC officials from taking positions in private companies.¹⁹

We have explained our understanding of the CCP’s involvement in the PRC’s economic and political structure in a past proceeding.²⁰ Public information suggests that the CCP exerts significant control over activities in the PRC.²¹ This conclusion is supported by, among other documents, a publicly available background report from the U.S. Department of State.²² With regard to the GOC’s claim that Chinese law prohibits GOC officials from taking positions in private companies, we have previously found that this particular law does not pertain to CCP

¹⁸ See GOC’s Initial Questionnaire Response (April 3, 2012) (GOC’s IQR) at 27.

¹⁹ *Id.* at 32 and GOC’s HRS Response at 7.

²⁰ See Memorandum to the File from Patricia Tran, International Trade Analyst, AD/CVD Operations, Office 3, regarding “Additional Documents for Preliminary Determination,” May 29, 2012 (Additional Documents Memorandum) at Attachments II and III (which include the post-preliminary analysis memorandum from certain seamless carbon and alloy steel standard, line, and pressure pipe and a State Department report, both recognizing the significant role the CCP has in the GOC).

²¹ *Id.* at Attachment III.

²² *Id.*; see also Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe From the People’s Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination, 75 FR 57444 (September 21, 2010) (Seamless Pipe from the PRC), and accompanying Issues and Decision Memorandum (Seamless Pipe Decision Memorandum) at Comment 7.

officials.²³

Thus, the Department finds, as it has in past investigations, that the information requested regarding the role of CCP officials in the management and operations of the HRS producers, and in the management and operations of the producers' owners, is necessary to our determination of whether these producers are authorities within the meaning of section 771(5)(B) of the Act. In addition, the GOC did not promptly notify the Department, in accordance with section 782(c) of the Act, that it was unable to submit the required information in the requested form and manner, nor did it suggest any alternative forms for submitting this information. In fact, in its initial questionnaire response to the "Information Regarding Input Producers in the PRC Appendix," the GOC stated that it "does not intend to respond to all aspects of the Department's extremely burdensome LTAR Appendix."²⁴ Further, the GOC did not provide any information regarding the attempts it undertook to obtain the requested information for the HRS suppliers/producers, despite the fact that we provided the GOC with a second opportunity to provide the information and additional time for responding to both the original and supplemental questionnaires.²⁵

Therefore, we preliminarily determine that the GOC has withheld necessary information that was requested of it and, thus, that the Department must rely on "facts otherwise available" in making our preliminary determination. See sections 776(a)(1) and 776(a)(2)(A) of the Act. Moreover, we preliminarily determine that the GOC has failed to cooperate by not acting to the

²³ See Seamless Pipe Decision Memorandum at 16.

²⁴ See GOC HRS Response at 1.

²⁵ The Department provided a 7-day extension to the GOC to submit its initial questionnaire response (see Department's March 21, 2012, letter to the GOC). The Department subsequently provided to the GOC an additional four days to submit its response to the HRS "Information Regarding Input Producers in the PRC Appendix" (see Department's March 28, 2012, letter to the GOC). The Department also extended by seven days the due date for the GOC's response to the second supplemental questionnaire, which contained HRS producer questions (see Department's April 23, 2012, letter to the GOC).

best of its ability to comply with our request for information. Consequently, we determine that the GOC has withheld information and impeded the investigation, and that an adverse inference is warranted in the application of facts available. See section 776(b) of the Act. As AFA, we are finding that all of the producers of HRS purchased by the respondents during the POI are “authorities” within the meaning of section 771(5)(B) of the Act.

In addition, for those instances in which the GOC provided the requested ownership documents (e.g., capital verification reports, business registration forms, and articles of association) but failed to provide information on whether individual owners of the input producers were officials of the CCP, and the extent to which CCP officials influenced the manner in which they conducted their firms’ operations, we are assuming, adversely, that the firms were government authorities that provided a financial contribution. Our approach in this regard is consistent with the Department’s practice.²⁶

Application of AFA: Provision of HRS Is Specific to Wind Tower Producers

The Department asked the GOC to provide a list of industries in the PRC that purchase HRS directly and to provide the amounts (volume and value) purchased by each of the industries, including the wind tower industry.²⁷ The Department requests such information for purposes of its de facto specificity analysis.

The GOC stated that it did “not impose any limitations on the consumption of hot-rolled

²⁶ See, e.g., Certain Coated Paper Suitable For High-Quality Print Graphics Using Sheet-Fed Presses From the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination, 75 FR 10774, 10778 (March 9, 2010); unchanged in Certain Coated Paper Suitable For High-Quality Print Graphics Using Sheet-Fed Presses From the People’s Republic of China: Final Affirmative Countervailing Duty Determination, 75 FR 59212 (September 27, 2010) (Certain Coated Paper from the PRC), and accompanying Issues and Decision Memorandum (Certain Coated Paper Decision Memorandum).

²⁷ See Department’s Initial Questionnaire to the GOC (February 17, 2012) at II- 6.

steel” and that “the type of consumers that may purchase hot-rolled steel sheet and plate is highly varied within the economy.”²⁸ The Department again asked the GOC to provide a list of industries that purchased HRS with the associated value and volume data in a supplemental questionnaire. To that request, the GOC provided a list of various industries and sectors that may use hot-rolled steel, which was produced based on the industrial classification scheme of China and that of the United Nations, i.e., ISIC Scheme. That information submitted by the GOC, however, is insufficient because it does not report the actual PRC industries that purchased HRS and the volume and value of each industry’s respective purchase for the POI and the prior two years.²⁹

Therefore, we preliminarily determine that the GOC has withheld necessary information that was requested of it and, thus, that the Department must rely on “facts available” in making our preliminary determination. See sections 776(a)(1) and 776(a)(2)(A) of the Act. Moreover, we preliminarily determine that the GOC has failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, an adverse inference is warranted in the application of facts available. See section 776(b) of the Act. In drawing an adverse inference, we find that the GOC’s provision of HRS to wind tower producers is specific within the meaning of section 771(5A) of the Act. The Department’s preliminary determination that the benefits under this program are specific is supported by the Department’s determinations regarding the GOC’s provision of HRS for LTAR in Cylinders from the PRC³⁰ and Steel Wheels

²⁸ See GOC’s IQR at 22 and 24.

²⁹ See GOC’s Second Supplemental Questionnaire Response (May 2, 2012) (GOC’s Second SQR) at 4 and Exhibit S2-7.

³⁰ See High Pressure Steel Cylinders From the People’s Republic of China: Final Affirmative Countervailing Duty Determination, 77 FR 26738 (May 7, 2012) (Cylinders from the PRC), and accompanying Issues and Decision

from the PRC.³¹

For details regarding the remaining elements of our analysis, see the “Provision of Hot-Rolled Steel for LTAR” section below.

Application of AFA: Provision of Electricity for LTAR

The Department is also investigating the provision of electricity for LTAR to the respondents by the GOC. The GOC, however, did not provide a complete response to the Department’s request for information regarding this program. In the February 17, 2012, initial questionnaire, we requested that the GOC provide the provincial price proposals for each province in which a mandatory respondent and any reported cross-owned company is located for the applicable tariff schedules that were in effect during the POI, and to explain how those price proposals were created.³² We also asked the GOC to explain how increases in labor costs, capital expenses, and transmission and distribution costs are factored into the price proposals, and how the cost element increases in the price proposals and the final price increases were allocated across the province and across tariff end-user categories.³³ In its April 3, 2012, initial questionnaire response, the GOC responded that it was unable to provide the price proposals because they are working documents for the National Development and Reform Commission’s

Memorandum (Cylinders Decision Memorandum) at 17-18, where the Department states : “Further, the GOC has reported that hot-rolled steel is used by a ‘wide variety of steel consuming industries.’ Because hot-rolled steel is only provided to steel consuming industries, we determine that the subsidy is being provided to a limited number of industries and is, therefore, specific.”

³¹ Certain Steel Wheels From the People’s Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination, 77 FR 17017 (March 23, 2012) (Steel Wheels from the PRC), and accompanying Issues and Decision Memorandum (Steel Wheels Decision Memorandum) at 8-10 and Comment 18.

³² See Department’s Initial Questionnaire to the GOC at Electricity Appendix.

³³ Id.

(NDRC) review.³⁴ To the questions regarding how electricity cost increases are reflected in retail price increases, the GOC's response explained theoretically how price increase should be formulated and did not explain the actual process that led to the price increases.³⁵

As such, on April 4, 2012, the Department issued a deficiency questionnaire to the GOC reiterating its request for this information.³⁶ In its April 18, 2012, questionnaire response, to the Electricity Appendix questions, the GOC reiterated its response contained in its initial questionnaire response.³⁷

After reviewing the GOC's responses to the Department's electricity questions, we preliminarily determine that the GOC's answers are inadequate and did not provide the necessary information required by the Department to analyze the provision of electricity in the PRC because the GOC did not provide the requested price proposal documents or explain how price increases were formulated. As a result, the Department must rely on the facts otherwise available in its analysis for this preliminary determination. See sections 776(a)(1) and 776(a)(2)(A) of the Act.

Moreover, we preliminarily determine that the GOC has failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information. In this regard, the GOC stated it couldn't provide the NDRC documents because they were "working documents." However, the GOC did not explain why such documents could not be submitted on the record of this proceeding, particularly as the Department permits parties to submit

³⁴ See GOC's IQR at 44.

³⁵ Id. at 46-49.

³⁶ See Department's Deficiency Questionnaire to the GOC (April 4, 2012) at 3-4.

³⁷ See GOC's First Supplemental Questionnaire Response (April 18, 2012) (GOC's First SQR) at 2-5.

information for limited disclosure if it is business proprietary. See, e.g., 19 CFR 351.306.

Therefore, an adverse inference is warranted in the application of facts available. See section 776(b) of the Act. Drawing an adverse inference, we preliminarily determine that the GOC's provision of electricity constitutes a financial contribution within the meaning of section 771(5)(D) of the Act and is specific within the meaning of section 771(5A) of the Act. We are also relying on an adverse inference by selecting the highest electricity rates that were in effect during the POI as our benchmarks for determining the existence and amount of any benefit under this program. See section 776(b)(4) of the Act.

The GOC provided the provincial rates schedules that were effect during the POI.³⁸ We have used those schedules as a benchmark rate source and identified the highest provincial electricity rates in effect during POI to serve as the benchmark rates applied in the benefit calculations for this program. For details on the preliminary calculated subsidy rates for the respondents, see below at "Provision of Electricity for LTAR."

Application of AFA: Grants Discovered During the Investigation

The Department will investigate potential subsidies it discovers during the course of an investigation, even if those subsidies were not alleged in the countervailing duty petition. See section 775 of the Act.

In supplemental questionnaires issued to CS Wind, Titan Companies, and the GOC, we identified a number of grants that the companies appeared to have received based on information in the financial statements that the companies placed on the record. Respondents had not reported these grants nor did they complete the appropriate appendices, despite the Department's

³⁸ See GOC's First SQR at Exhibits S1-1 and S1-2.

request in the initial questionnaire that the respondents should report all subsidies used during the POI, not merely those related to allegations under investigation. In the supplemental questionnaires, we requested that CS Wind and Titan Companies provide more information about these grants by responding to the relevant appendices.³⁹ We also instructed the companies to share with the GOC the grant information so that the Chinese government could also submit information on the programs under which these grants were provided.⁴⁰ In the April 11, 2012, supplemental questionnaire issued to the GOC, we asked the Chinese government to coordinate with the respondents to ensure receipt of the information regarding the assistance that the companies received and to provide a complete response to the Department's appendices.⁴¹ In response to the GOC's April 23, 2012, extension request in which it stated that the PRC government needed more time "to coordinate with the respondents on the overlapping issues raised in the questionnaire," we provided to the GOC an additional week to respond to the Department's request for information.⁴²

Both CS Wind and Titan Companies provided responses for the grants, which they respectively received.⁴³ The GOC, however, only confirmed that the respondents received the grants and in a few instances provided a limited program description. The GOC did not provide a response to any of the required appendices (i.e., Standard Questions Appendix, Allocation Appendix, and Grant Appendix) and, as such, did not provide any specificity information on the

³⁹ See Department's First Supplemental Questionnaire to CS Wind (April 6, 2012) and Titan Companies (April 11, 2012).

⁴⁰ Id.

⁴¹ See Department's Second Supplemental Questionnaire to the GOC (April 11, 2012).

⁴² See GOC's Extension Request to Respond to the Second Supplemental Questionnaire (April 23, 2012) and the Department's Response to the GOC's Extension Request (April 23, 2012).

⁴³ See CS Wind's First SQR (April 30, 2012) and Titan Companies' First Supplemental Questionnaire Response Part 1 (April 30, 2012) (Titan's First SQR Part 1).

programs.⁴⁴ The GOC stated that it was unable to respond to the request for information with regard to the programs during the timeframe given for the supplemental questionnaire⁴⁵ despite the Department granting to the GOC additional time to respond to the questionnaire.

The Department normally relies on information from the government to assess program specificity. However, in their respective responses, CS Wind and Titan Companies did provide some information originally generated by the GOC (i.e., approval documents) which the Department could use in its specificity analysis. Therefore, where the respondents submitted such information about the specificity of a program, we relied upon that information to make our preliminary determination. Where neither a respondent company nor the GOC provided information that would allow us to determine the specificity of a program, we relied upon AFA to make our preliminary determination. For those particular programs, we preliminarily find that the GOC withheld necessary information that was requested of it and, thus, has impeded the investigation. Further, the GOC has not cooperated to the best of its ability in responding to the Department's request for information. Consequently, an adverse inference is warranted in the applicable of facts available. See section 776(b) of the Act.

We analyzed the grants and preliminarily found that a number of them provided benefits to the respondents during the POI. For those grants, see "Programs Preliminarily Determined To Be Countervailable" below. As we discuss in the section "Programs Preliminarily Determined Not To Provide Countervailable Benefits During the POI," those grants found to be used but the benefit from the program results in a net subsidy rate that is less than 0.005 percent ad valorem

⁴⁴ See GOC Second SQR at 7-12.

⁴⁵ Id. at 10 and 12.

as well as grants provided prior to the POI that did not pass the “0.5 percent test” do not give rise to a benefit during the POI.

SUBSIDIES VALUATION INFORMATION

Period of Investigation

The POI for which we are measuring subsidies is January 1, 2011, through December 31, 2011, which corresponds to the most recently completed fiscal year. See 19 CFR 351.204(b)(2).

Allocation Period

Under 19 CFR 351.524(b), non-recurring subsidies are allocated over a period corresponding to the average useful life (AUL) of the renewable physical assets used to produce the subject merchandise. Pursuant to 19 CFR 351.524(d)(2), there is a rebuttable presumption that the AUL will be taken from the U.S. Internal Revenue Service’s 1977 Class Life Asset Depreciation Range System (IRS Tables), as updated by the Department of Treasury. For the subject merchandise, the IRS Tables prescribe an AUL of 12 years, for assets used in the manufacture of fabricated metal products. No interested party has claimed that the AUL of 12 years is unreasonable.

Further, for non-recurring subsidies, we have applied the “0.5 percent expense test” described in 19 CFR 351.524(b)(2). Under this test, we compare the amount of subsidies approved under a given program in a particular year to the sales (total sales or total export sales, as appropriate) for the same year. If the amount of subsidies is less than 0.5 percent of the relevant sales, then the benefits are allocated to the year of receipt rather than allocated over the AUL period.

Attribution of Subsidies

In accordance with 19 CFR 351.525(b)(6)(i), the Department normally attributes a subsidy to the products produced by the company that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)-(v) provides additional rules for the attribution of subsidies received by respondents with cross-owned affiliates. Subsidies to the following types of cross-owned affiliates are covered in these additional attribution rules: (ii) producers of the subject merchandise; (iii) holding companies or parent companies; (iv) producers of an input that is primarily dedicated to the production of the subject merchandise; or (v) an affiliate producing non-subject merchandise that otherwise transfers a subsidy to a respondent.

Cross-Ownership

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of another corporation in essentially the same ways it can use its own assets. This standard will normally be met where there is a majority voting interest between two corporations, or through common ownership of two (or more) corporations. The Court of International Trade (CIT) has upheld the Department's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same ways it could use its own subsidy benefits.⁴⁶ Based on information on the record, we preliminarily determine that cross-ownership exists, in accordance with 19 CFR 351.525(b)(6)(vi), among the following companies.

⁴⁶ See Fabrique de Fer de Charleroi v. United States, 166 F. Supp 2d 593, 600-604 (CIT 2001).

CS Wind⁴⁷

As discussed above, the Department selected CS Wind (consisting of CS Wind China Co., Ltd. and CS Wind Corporation) as a mandatory respondent. The companies that responded to the Department's questionnaires are CS Wind China Co., Ltd. (CSWC)⁴⁸ and its cross-owned affiliate, CS Wind Tech (Shanghai) Co., Ltd. (CSWS). CSWC and CSWS are affiliated with other companies. CS Wind provided information on those affiliates to demonstrate that none of them are required to provide questionnaire responses under the Department's attribution and cross-ownership regulations.

CSWC, the Chinese producer of subject merchandise, was established on September 8, 2006, as a foreign invested enterprise (FIE) in the Lianyungang Economic and Technological Development Zone, Lianyungang City, Jiangsu Province. CSWC is wholly-owned by CS Wind Corporation (CS Wind Korea).⁴⁹ In 2006, CS Wind Korea was established in Korea and has no Chinese based ownership.⁵⁰ CS Wind Korea is the entity that sells the PRC-origin wind towers and related equipment produced by CSWC to foreign markets, including the United States.⁵¹

Established on November 23, 2009, in Shanghai, CSWS is the wholly-owned subsidiary of CSWC.⁵² CSWS is a domestically-owned trading company that sells minor inputs (e.g., paint) to CSWC for the production of subject merchandise.⁵³

⁴⁷ For the company information, see CS Wind's Initial Questionnaire Response (April 3, 2012) (CS Wind's IQR) at 2-6 and Exhibit CVD-4.

⁴⁸ Company was previously known as "CS Wind Tech Co., Ltd." During the POI, the company changed its English name to "CS Wind China Co., Ltd." See CS Wind's IQR at 2.

⁴⁹ See CS Wind's IQR at 2-6 and Exhibit CVD-4.

⁵⁰ Id.

⁵¹ Id.

⁵² Id.

⁵³ Id.

Pursuant to 19 CFR 351.525(b)(6)(vi), we preliminarily determine that CSWC and CSWS are cross-owned because of common ownership. Regarding CSWS, we are attributing any subsidy received by the company as directed under 19 CFR 351.525(b)(6)(iv). As such, for this preliminary determination, we are attributing any subsidy received by either CSWC or CSWS to the combined sales of both companies, excluding inter-company sales. Hereinafter, we refer to CSWC and CSWS collectively as CS Wind, unless otherwise indicated.

*Titan Companies*⁵⁴

Titan Wind responded to the Department's original and supplemental questionnaires on behalf of itself and five cross-owned affiliates: Titan Lianyungang Metal Products Co. Ltd. (Titan Lianyungang), Baotou Titan Wind Energy Equipment Co., Ltd. (Titan Baotou), Shenyang Titan Metal Co., Ltd. (Titan Shenyang), Titan (Suzhou) Wind Power Equipment Co., Ltd. (Titan Suzhou), and Shanghai Tianshen Investment Management Co., Ltd. (Shanghai Tianshen).

Titan Wind was established on January 18, 2005, as an FIE in Taicang Economic Development Zone.⁵⁵ Its original name was Titan (Suzhou) Metal Product Co., Ltd. (Titan Metal) and changed to Titan Wind Energy (Suzhou) Co. Ltd. in December 8, 2009.⁵⁶ Its original legal organization also transformed from a limited liability company to a joint stock limited company at that time.⁵⁷ Shanghai Tianshen is a holding company with majority (*i.e.*, wholly owns or owns more than 50 percent) ownership in Titan Wind. Titan Wind reported that it, in turn, owns the majority of the shares of Titan Lianyungang, Titan Baotou, Titan Shenyang

⁵⁴ For company information, see Titan Companies' Initial Questionnaire Response (April 3, 2012) (IQR) at 5-12 and Exhibit 1.

⁵⁵ See Titan Companies' IQR at 5.

⁵⁶ Id. at 6 – 8.

⁵⁷ Id. at 8.

and Titan Suzhou.⁵⁸ As all of these companies have common ownership through Titan Wind, we preliminarily determine that Shanghai Tianshen, Titan Wind, Titan Lianyungang, Titan Baotou, Titan Shenyang and Titan Suzhou are cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi). Titan Wind, Titan Lianyungang, Titan Baotou, and Titan Shenyang are producers of subject merchandise; Titan Suzhou provides inputs for the production of subject merchandise; and Shanghai Tianshen is a holding company and does not produce any merchandise. Consequently, the subsidies received by these companies are being attributed according to the rules established in 19 CFR 351.525(b)(6)(ii) and (b)(6)(iv). Regarding the holding company, Shanghai Tianshen, normally the Department would attribute subsidies received by the firm over its total consolidated sales, as described under 19 CFR 351.525(b)(6)(iii). However, we preliminarily determine that the information supplied by the Titan Companies does not allow the derivation of a consolidated sales figure.⁵⁹ As a result, we have attributed subsidies to Shanghai Tianshen in the manner described below. Hereinafter, we refer to Titan Wind, Titan Lianyungang, Titan Baotou, Titan Shenyang and Titan Suzhou, collectively as Titan Companies, unless otherwise indicated.

We preliminarily determine that multiple sales denominators are appropriate for use in the attribution of subsidies to Titan Companies. To attribute a subsidy received by Titan Wind, Titan Lianyungang, Titan Baotou, or Titan Shenyang, we used as the denominator the total consolidated sales of Titan Wind, Titan Lianyungang, Titan Baotou, and Titan Shenyang,

⁵⁸ Id. at 10 – 12.

⁵⁹ As stated above, Titan Companies reported Shanghai Taishen is the parent company of Titan Wind. Shanghai Taishen's 2009, 2010, and 2011 financial statement does not appear to be on a consolidated basis (incorporating its own financial information and its affiliates). See Titan Companies' IQR at Exhibit 15, 16, 17 and its April 27, 2012, supplemental questionnaire response at Exhibit SCVD – 27 and SCVD – 28. Therefore, the Department will continue to review this information.

exclusive of sales among affiliated companies, for 2011. To attribute a subsidy received by Titan Suzhou, we used as the denominator the total consolidated sales of Titan Wind, Titan Lianyungang, Titan Baotou, Titan Shenyang, and Titan Suzhou, exclusive of sales among affiliated companies, for 2011. As explained above, we find we are unable to derive a consolidated sales figure for Shanghai Tianshen. Therefore, to attribute a subsidy received by Shanghai Tianshen, we used as the denominator the total consolidated sales of Shanghai Tianshen, Titan Wind, Titan Lianyungang, Titan Baotou, Titan Shenyang, and Titan Suzhou, exclusive of sales among affiliated companies, for 2011.⁶⁰ Lastly, to attribute an export subsidy received by a company, we used as the denominator the 2011 export sales of Titan Wind because it is the only cross-owned company with export sales.

BENCHMARKS AND DISCOUNT RATES

The Department is investigating loans received by the respondents from Chinese policy banks and state-owned commercial banks (SOCBs), as well as non-recurring, allocable subsidies (see 19 CFR 351.524(b)(1)). The derivation of the benchmark and discount rates used to value these subsidies is discussed below.

Short-Term RMB-Denominated Loans

Section 771(5)(E)(ii) of the Act explains that the benefit for loans is the “difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market.”

⁶⁰ See Department’s methodology and treatment of RZBC Co. Ltd. and its affiliates in Citric Acid and Certain Citrate Salts from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review, 76 FR 33219 (June 8, 2011) and unchanged in the final results, Citric Acid and Certain Citrate Salts From the People’s Republic of China: Final Results of Countervailing Duty Administrative Review, 76 FR 77206 (December 12, 2011).

Normally, the Department uses comparable commercial loans reported by the company as a benchmark.⁶¹ If the firm did not have any comparable commercial loans during the period, the Department's regulations provide that we "may use a national average interest rate for comparable commercial loans."⁶²

As noted above, section 771(5)(E)(ii) of the Act indicates that the benchmark should be a market-based rate. For the reasons first explained in Coated Paper from the PRC,⁶³ loans provided by Chinese banks reflect significant government intervention in the banking sector and do not reflect rates that would be found in a functioning market. Because of this, any loans received by respondents from private Chinese or foreign-owned banks would be unsuitable for use as benchmarks under 19 CFR 351.505(a)(2)(i). Similarly, we cannot use a national interest rate for commercial loans as envisaged by 19 CFR 351.505(a)(3)(ii). Therefore, because of the special difficulties inherent in using a Chinese benchmark for loans, the Department is selecting an external market-based benchmark interest rate. The use of an external benchmark is consistent with the Department's practice. For example, in Softwood Lumber from Canada, the Department used U.S. timber prices to measure the benefit for government-provided timber in Canada.⁶⁴

In past proceedings involving imports from the PRC, we calculated the external

⁶¹ See 19 CFR 351.505(a)(3)(i).

⁶² See 19 CFR 351.505(a)(3)(ii).

⁶³ See Coated Paper Decision Memorandum at Comment 10; see also Memorandum to the File from Kristen Johnson, Trade Analyst, AD/CVD Operations, Office 3, regarding "Placement of Banking Memoranda on Record of the Instant Investigation" (May 29, 2012).

⁶⁴ See Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products From Canada, 67 FR 15545 (April 2, 2002) (Softwood Lumber from Canada), and accompanying Issues and Decision Memorandum (Softwood Lumber Decision Memorandum) at "Analysis of Programs, Provincial Stumpage Programs Determined to Confer Subsidies, Benefit."

benchmark using the methodology first developed in Coated Paper from the PRC⁶⁵ and more recently updated in Thermal Paper from the PRC.⁶⁶ Under that methodology, we first determine which countries are similar to the PRC in terms of gross national income, based on the World Bank's classification of countries as: low income; lower-middle income; upper-middle income; and high income. As explained in Coated Paper from the PRC, this pool of countries captures the broad inverse relationship between income and interest rates. For 2001 through 2009, the PRC fell in the lower-middle income category.⁶⁷ Beginning in 2010, however, the PRC is in the upper-middle income category.⁶⁸ Accordingly, as explained further below, we are using the interest rates of upper-middle income countries to construct the benchmark.

The Department's methodology relies on data published by the World Bank and International Monetary Fund. For the year 2011 (the POI), the World Bank, however, has not yet published all the necessary data relied on by the Department to compute a short-term benchmark interest rate for the PRC. Specifically, the World Governance Indicators are not yet available. Therefore, for purposes of this preliminary determination, where the use of a short-term benchmark rate for 2011 is required, we have applied the 2010 short-term benchmark rate for the PRC, as calculated by the Department and discussed below. The Department notes that the current 2010 loan benchmark may be updated, pending the release of all the necessary 2011 data, by the final determination.

⁶⁵ See Coated Paper Decision Memorandum at Comment 10.

⁶⁶ See Lightweight Thermal Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 73 FR 57323 (October 2, 2008) (Thermal Paper from the PRC), and accompanying Issues and Decision Memorandum (Thermal Paper Decision Memorandum) at 8-10.

⁶⁷ See World Bank Country Classification, <http://econ.worldbank.org/>. See also Memorandum to the File from Patricia M. Tran, International Trade Analyst, AD/CVD Operations, Office 3, regarding "Interest Rate Benchmarks" (Interest Rate Benchmarks Memorandum) (May 29, 2012).

⁶⁸ Id.

After the Department identifies the appropriate interest rates, the next step in constructing the benchmark has been to incorporate an important factor in interest rate formation, the strength of governance as reflected in the quality of the countries' institutions. The strength of governance has been built into the analysis by using a regression analysis that relates the interest rates to governance indicators. In each of the years from 2001-2009, the results of the regression analysis reflected the intended, common sense result: stronger institutions meant relatively lower real interest rates, while weaker institutions meant relatively higher real interest rates.⁶⁹ For 2010, however, the regression does not yield that outcome for the PRC's income group.⁷⁰

This contrary result for a single year in ten does not lead us to reject the strength of governance as a determinant of interest rates. As confirmed by the Federal Reserve, "there is a significant negative correlation between institutional quality and the real interest rate, such that higher quality institutions are associated with lower real interest rates."⁷¹ However, for 2010, incorporating the governance indicators in our analysis does not make for a better benchmark. Therefore, while we have continued to rely on the regression-based analysis used since Coated Paper from the PRC to compute the benchmarks for loans taken out prior to the POI, for the 2010 benchmark we are using an average of the interest rates of the upper-middle income countries. Based on our experience for the 2001-2009 period, in which the average interest rate of the lower-middle income group did not differ significantly from the benchmark rate resulting from the regression for that group, use of the average interest rate for 2010 does not introduce a distortion into our calculations.

⁶⁹ See Additional Documents Memorandum at Attachment I for Federal Reserve Consultation Memorandum.

⁷⁰ See Interest Rate Benchmarks Memorandum.

⁷¹ Id.

Many of the countries in the World Bank’s upper-middle and lower-middle income categories reported lending and inflation rates to the International Monetary Fund, and they are included in that agency’s international financial statistics (IFS). With the exceptions noted below, we have used the interest and inflation rates reported in the IFS for the countries identified as “upper middle income” by the World Bank for 2010 and “lower middle income” for 2001-2009. First, we did not include those economies that the Department considered to be non-market economies for antidumping purposes for any part of the years in question, for example: Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Turkmenistan. Second, the pool necessarily excludes any country that did not report both lending and inflation rates to IFS for those years. Third, we removed any country that reported a rate that was not a lending rate or that based its lending rate on foreign-currency denominated instruments. For example, Jordan reported a deposit rate, not a lending rate, and the rates reported by Ecuador and Timor L’Este are dollar-denominated rates; therefore, the rates for these three countries have been excluded. Finally, for each year the Department calculated an inflation-adjusted short-term benchmark rate, we have also excluded any countries with aberrational or negative real interest rates for the year in question.⁷²

The resulting inflation-adjusted benchmark lending rates are included in the respondents’ preliminarily calculations memoranda. Because these rates are net of inflation, we adjusted the benchmark to include an inflation component.⁷³

⁷² See Interest Rate Benchmarks Memorandum.

⁷³ Id.

Long-Term RMB-Denominated Loans

The lending rates reported in the IFS represent short- and medium-term lending, and there are not sufficient publicly available long-term interest rate data upon which to base a robust benchmark for long-term loans. To address this problem, the Department has developed an adjustment to the short- and medium-term rates to convert them to long-term rates using Bloomberg U.S. corporate BB-rated bond rates.⁷⁴

In Citric Acid from the PRC, this methodology was revised by switching from a long-term mark-up based on the ratio of the rates of BB-rated bonds to applying a spread which is calculated as the difference between the two-year BB bond rate and the n-year BB bond rate, where n equals or approximates the number of years of the term of the loan in question.⁷⁵ Finally, because these long-term rates are net of inflation as noted above, we adjusted the benchmark to include an inflation component.⁷⁶

Foreign Currency-Denominated Loans

To calculate benchmark interest rates for foreign currency-denominated loans, the Department is again following the methodology developed over a number of successive PRC investigations. For US dollar short-term loans, the Department used as a benchmark the one-year dollar London Interbank Offering Rate (LIBOR), plus the average spread between LIBOR and the one-year corporate bond rates for companies with a BB rating. Likewise, for any loans

⁷⁴ See, e.g., Light-Walled Rectangular Pipe and Tube From People's Republic of China: Final Affirmative Countervailing Duty Investigation Determination, 73 FR 35642 (June 24, 2008) (Rectangular Pipe from the PRC), and accompanying Issues and Decision Memorandum (Rectangular Pipe Decision Memorandum) at 8.

⁷⁵ See Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Affirmative Countervailing Duty Determination, 74 FR 16836 (April 13, 2009) (Citric Acid from the PRC), and accompanying Issues and Decision Memorandum (Citric Acid Decision Memorandum) at Comment 14.

⁷⁶ See Interest Rate Benchmarks Memorandum.

denominated in other foreign currencies, we used as a benchmark the one-year LIBOR for the given currency plus the average spread between the LIBOR rate and the one-year corporate bond rate for companies with a BB rating.

For any long-term foreign currency-denominated loans, the Department added the applicable short-term LIBOR rate to a spread which is calculated as the difference between the one-year BB bond rate and the n-year BB bond rate, where “n” equals or approximates the number of years of the term of the loan in question.⁷⁷ .

Discount Rate Benchmarks

Consistent with 19 CFR 351.524(d)(3)(i)(A), we have used, as our discount rate, the long-term interest rate calculated according to the methodology described above for the year in which the government provided non-recurring subsidies.⁷⁸ .

The resulting interest rate benchmarks that we used in the preliminary calculations are provided in the respondents’ preliminary calculations memoranda.

ANALYSIS OF PROGRAMS

I. Programs Preliminarily Determined To Be Countervailable

A. Policy Lending to the Renewable Energy Industry

Petitioner alleged that the GOC subsidizes wind tower producers through the provision of policy loans. According to Petitioner, the GOC provides for preferential policy lending to wind tower producers through the “Renewable Energy Law,” the “Medium and Long-Term Development Plan for Renewable Energy in China,” the “Interim Measures for the

⁷⁷ Id.

⁷⁸ Id., and Respondents’ preliminary calculations memoranda.

Administration of Financial Subsidy Fund for Renewable and Energy Saving-Building Materials,” and other Chinese central government programs and measures, including the GOC’s five-year plans.⁷⁹

Both respondents reported having loans outstanding during the POI. The Department finds that the loans to the respondents are countervailable. The information on the record indicates the GOC has placed great emphasis on targeting the renewable energy industry, including wind towers, for development in recent years. For example, the “Renewable Energy Law,” in Article 25, calls specifically for the use of loans in implementing the GOC’s plans for renewable energy: “Financial institutions may offer preferential loans with financial interest subsidy to projects for exploitation of renewable energy that are listed in the national development guidance catalogue of the renewable energy industry and meet the requirements for granting loans.”⁸⁰

The GOC’s “Guidelines of the Eleventh Five-Year Plan for National Economic and Social Development” (2006-2010) contains the section “All Out Develop Renewable Energy Resources” with the instruction to “carry out preferential finance and taxation and investment policies and mandatory market share policies, encourage the production and consumption of renewable energy resources . . .”⁸¹ At Article 5 of the “Decision of the State Council on Promulgating the Interim Provisions on Promoting Industrial Structure Adjustment for Implementation” (December 2, 2005) (Decision 40), the GOC announced that: “We shall

⁷⁹ See Department’s Initiation Checklist for this investigation (January 18, 2012) at “Policy Lending to the Renewable Energy Industry” (page 19-20).

⁸⁰ See Petition at Volume III, Exhibit III-7.

⁸¹ See GOC’s IQR at D-7.1, Chapter 12 “Optimize the Development of Energy Industry,” Section 4 “All Out Develop Renewable Energy Resources.”

actively support and develop new energy and renewable energy industries, encourage the development and utilization of substitute resources for petroleum, and clean energy, as well, actively propel the industrialization of clean coal technology, and speed up the development of wind power, solar energy, and biomass energy, etc.”⁸² Decision 40 states that renewable energy is an encouraged category that is “to be encouraged and supported with policies and measures.”⁸³

Renewable energy is among the projects listed in the NDRC’s “Directory Catalogue on Readjustment of Industrial Structure” (December 2, 2005) (the Catalogue), which contains a list of encouraged projects the GOC develops through loans and other forms of assistance, and which the Department has relied upon in prior specificity determinations.⁸⁴ Specifically, the Catalogue includes the encouraged power project IV(5) for: “wind power and the development and utilization of such renewable energy as solar energy, geothermal energy, ocean power, and biomass power” and the encouraged machinery project XII(12) for: “manufacturing of clean energy power generation equipment (nuclear power, wind power, solar energy and tide, etc.)”⁸⁵

Additionally, the GOC provided source documents concerning the largest loans that the respondents had outstanding during the POI. Information in these business proprietary documents further supports our preliminary determination that the GOC has a policy in place to encourage the development and production of wind towers through policy lending. See Memorandum to the File from Patricia M. Tran, International Trade Analyst, AD/CVD

⁸² Id. at D-10.

⁸³ Id. at D-10, Article 14.

⁸⁴ See, e.g., Certain New Pneumatic Off-the-Road Tires From the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Final Negative Determination of Critical Circumstances, 73 FR 40480 (July 15, 2008) (Tires from the PRC), and accompanying Issues and Decision Memorandum (Tires Decision Memorandum) at “Government Policy Lending.”

⁸⁵ See GOC’s IQR at Exhibit D-11.

Operations, Office 3, regarding “Excerpt of Internal Loan Documents” (May 29, 2012).

Therefore, given the evidence demonstrating the GOC’s objective of developing the renewable energy sector, and wind power in particular, through loans and other financial incentives, we preliminarily determine there is a program of preferential policy lending specific to wind tower producers, within the meaning of section 771(5A)(D)(i) of the Act. Additionally, because CSWC reported that it applied for bank loans in the form of export invoice financing,⁸⁶ we preliminarily determine that the loans received by CSWC are specific under section 771(5A)(A) of the Act because receipt of the financing is contingent upon exporting and that these export loans confer a benefit within the meaning of section 771(5)(E)(ii) of the Act.

We also preliminarily find that loans from SOCBs under this program constitute financial contributions, pursuant to sections 771(5)(B)(i) and 771(5)(D)(i) of the Act, because SOCBs are “authorities”⁸⁷ The loans provide a benefit equal to the difference between what the recipients paid on their loans and the amount they would have paid on comparable commercial loans. See section 771(5)(E)(ii) of the Act. To calculate the benefit from this program, we used the benchmarks discussed above under the “Subsidy Valuation Information” section and applied, for CS Wind, an export sales denominator.⁸⁸ To calculate the net subsidy rate attributable to the Titan Companies, we divided the benefit by total sales in the manner described in the “Cross-Ownership” section. To calculate the net subsidy rate attributable to CS Wind, we divided the

⁸⁶ See CS Wind’s IQR at 21.

⁸⁷ See, e.g., Tires Decision Memorandum at Comment E2, where the Department discusses that a complete analysis of the facts and circumstances of the Chinese banking system that have led us to find that Chinese policy banks and SOCBs constitute a government authority as outlined in Coated Paper Decision Memorandum at Comment 8. Parties in the instant case have not demonstrated that conditions within the Chinese banking sector have changed significantly since that previous decision such that a reconsideration of that decision is warranted.

⁸⁸ See also 19 CFR 351.505(c).

benefit by total export sales, as described in the “Cross-Ownership” section. On this basis, we preliminarily determine countervailable subsidy rates of 0.03 percent ad valorem for CS Wind and 0.30 percent ad valorem for Titan Companies.⁸⁹

B. Two Free, Three Half Program for FIEs

Under Article 8 of the “Income Tax Law of the People’s Republic of China for Enterprises with Foreign Investment and Foreign Enterprises” (FIE Tax Law), an FIE that is “productive” and scheduled to operate for more than ten years is exempt from income tax in the first two years of profitability and pays income taxes at half the standard rate for the next three years.⁹⁰ According to the GOC, the program was terminated effective January 1, 2008, by the “Enterprise Income Tax Law” (EITL), but companies already enjoying the preference were permitted to continue paying taxes at reduced rates.⁹¹ CSWC benefited from tax savings provided under this program during the POI.⁹²

The Department has previously found the “Two Free, Three Half” program to confer a countervailable subsidy.⁹³ Consistent with the earlier cases, we preliminarily determine that the “Two Free, Three Half” income tax exemption/reduction confers a countervailable subsidy. The exemption/reduction is a financial contribution in the form of revenue forgone by the GOC and it provides a benefit to the recipient in the amount of the tax savings. See section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We also determine that the exemption/reduction afforded by

⁸⁹ See Memorandum to the File from Kristen Johnson, Trade Analyst, AD/CVD Operations, Office 3, regarding “CS Wind’s Preliminary Calculations” (CS Wind’s Preliminary Calculations) (May 29, 2012) and Memorandum to the File from Patricia M. Tran, International Trade Analyst, AD/CVD Operations, Office 3 regarding “Titan Companies Preliminary Calculations” (Titan Companies’ Preliminary Calculations) (May 29, 2012).

⁹⁰ See GOC IQR at 60-70.

⁹¹ Id. at 70.

⁹² See CS Wind’s IQR at 23-25

⁹³ See Coated Paper Decision Memorandum at 11-12; see also Seamless Pipe Decision Memorandum at 25.

the program is limited as a matter of law to certain enterprises, i.e., productive FIEs, and, hence, is specific under section 771(5A)(D)(i) of the Act.

To calculate the benefit, we treated the income savings by CSWC as a recurring benefit, consistent with 19 CFR 351.524(c)(1). We compared the income tax rate that the company should have paid (22 percent) with the reduced income tax rate of (11 percent), which CSWC paid during the POI, to calculate the tax savings. To calculate the net subsidy rate attributable to CS Wind, we divided the benefit by total sales, as described in the “Cross-Ownership” section. On this basis, we preliminarily determine a countervailable subsidy rate of 0.32 percent ad valorem for CS Wind.⁹⁴

To calculate the benefit, we treated the income savings by Titan Wind as a recurring benefit, consistent with 19 CFR 351.524(c)(1). We compared the income tax rate that the company should have paid (25 percent) with the reduced income tax rate of (12.5 percent), which Titan Wind paid during the POI, to calculate the tax savings. To calculate the net subsidy rate attributable to Titan Companies, we divided the benefit by total sales, as described in the “Cross-Ownership” section.⁹⁵ On this basis, we preliminarily determine a countervailable subsidy rate of 1.50 percent ad valorem for Titan Companies.

C. Income Tax Benefits for FIEs Based on Geographic Location

Pursuant to Article 7 of the FIE Tax Law, productive FIEs established in a coastal economic development zone, special economic zone, or economic technology development zone

⁹⁴ See CS Wind’s Preliminary Calculations.

⁹⁵ See Titan Companies’ Preliminary Calculations.

pay a reduced corporate income tax rate of either 15 or 24 percent, depending on the zone.⁹⁶

CSWC reported that it is entitled to a reduced tax rate because of its location in the Lianyungang Economic and Technological Development Zone.⁹⁷

The GOC reported that after the EITL became effective January 1, 2008, all enterprises in China are subject to the unified tax rate of 25 percent regardless of whether they are located in a special economic zone.⁹⁸ However, the GOC added that as stipulated in Article 57 of the new tax law, enterprises approved and incorporated prior to the promulgation of the law and were already subject to the preferential tax rates under previous tax laws, were given a grace period of five years from the implementation of the new tax law.⁹⁹ Specifically, the GOC explained that enterprises that enjoyed preferential policies of reduced tax rates are gradually transitioned to the statutory, uniform tax rate of 25 percent over a 5 year period after the implementation of the new income tax law.¹⁰⁰ For tax year 2010, enterprises enjoyed a tax rate of 22 percent.¹⁰¹

We preliminarily determine that the reduced income tax rate paid by FIEs under this program confers a countervailable subsidy. The reduced rate is a financial contribution in the form of revenue forgone by the GOC and it provides a benefit to the recipient in the amount of the tax savings. See section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We also preliminarily determine that the reduction afforded by this program is limited to enterprises located in designated geographic regions and, hence, is specific under section 771(5A)(D)(iv) of

⁹⁶ See GOC's IQR at 73.

⁹⁷ See CS Wind's IQR at 26.

⁹⁸ See GOC's IQR at 80.

⁹⁹ Id.

¹⁰⁰ Id.

¹⁰¹ Id. at 81.

the Act. The Department has previously found this program to be countervailable.¹⁰²

Consistent with those prior PRC proceedings, we treated the income tax savings enjoyed by CSWC as a recurring benefit, consistent with 19 CFR 351.524(c)(1). To calculate the benefit, we compared the income tax rate that the company should have paid (25 percent) with the reduced income tax rate (22 percent), which the company paid during the POI. To calculate the net subsidy rate attributable to CS Wind, we divided the benefit by total sales, as described in the “Cross-Ownership” section. On this basis, we preliminarily determine that CS Wind received a countervailable subsidy of 0.09 percent ad valorem under this program.¹⁰³

D. Import Tariff and Value Added Tax Exemptions for Use of Imported Equipment

Enacted in 1997, the “Circular of the State Council on Adjusting Tax Policies on Imported Equipment” (GUOFA No. 37), exempts both FIEs and certain domestic enterprises from VAT and tariffs on imported equipment provided the equipment is not included in the catalogs on non-duty exemptible article of importation for either FIEs or domestic enterprises.¹⁰⁴ The objective of the program is to encourage foreign investment and to introduce foreign advanced technology equipment and industry technology upgrades.¹⁰⁵ The NDRC, or its provincial branch, provides a certificate to enterprises, which receive the exemption.¹⁰⁶ Those enterprises then present the certificates along with other application documentation to their local customs authorities to receive the tariff and VAT exemptions on eligible equipment imports.

¹⁰² See e.g., Coated Paper Decision Memorandum at “Reduced Income Tax Rates for FIEs Based on Location” and Thermal Paper Decision Memorandum at “Reduced Income Tax Rates for FIEs Based on Location.”

¹⁰³ See CS Wind’s Preliminary Calculations.

¹⁰⁴ See GOC’s IQR at 90-100.

¹⁰⁵ Id.

¹⁰⁶ Id.

CSWC received VAT and tariff exemptions under this program.¹⁰⁷ The Department has previously found VAT and tariff exemptions under this program to confer countervailable subsidies.¹⁰⁸

Consistent with the prior PRC proceedings, we preliminarily determine that VAT and tariff exemptions on imported equipment confer a countervailable subsidy. The exemptions are a financial contribution in the form of revenue forgone by the GOC and they provide a benefit to the recipient in the amount of VAT and tariff savings.¹⁰⁹ We also preliminarily determine that the VAT and tariff exemptions afforded by the program are specific under section 771(5A)(D)(iii)(I) of the Act because the program is limited to certain enterprises, i.e., FIEs and domestic enterprises involved in “encouraged” projects.¹¹⁰

Normally, we treat exemptions from indirect taxes and import charges, such as VAT and tariff exemptions, as recurring benefits, consistent with 19 CFR 351.524(c)(1), and allocate the benefits to the year in which they were received. However, when an indirect tax or import charge exemption is provided for, or tied to, the capital structure or capital assets of a firm, the Department normally treats it as a non-recurring benefit and allocates the benefit to the firm over the AUL.¹¹¹ CSWC provided a list of VAT and tariff exemptions that the company received for imported capital equipment.¹¹² Based on that information, we preliminarily determine that the VAT and tariff exemptions are tied to the capital structure or capital assets of the company, and, as such, should be allocated over time.

¹⁰⁷ Id.

¹⁰⁸ See Coated Paper Decision Memorandum at 13-14; see also Seamless Pipe Decision Memorandum at 23-25.

¹⁰⁹ See section 771(5)(D)(ii) of the Act and 19 CFR 351.510(a)(1).

¹¹⁰ See Coated Paper Decision Memorandum at Comment 16.

¹¹¹ See 19 CFR 351.524(c)(2)(iii) and 19 CFR 351.524(d)(2).

¹¹² See CS Wind’s First SQR at Exhibit S1-21.

To calculate the countervailable subsidy, we used our standard methodology for non-recurring grants.¹¹³ CSWC reported importing the equipment in 2007 and 2008.¹¹⁴ For 2007, the benefits received by CSWC under this program exceeded 0.5 percent of relevant sales for that year. We, thus, allocated the benefits received in 2007 over the AUL of 12 years, pursuant to 19 CFR 351.524(b)(1). For 2008, the benefits received by CSWC under this program did not exceed 0.5 percent of relevant sales for that year. As such, we expensed those benefits to the year in which they were received, i.e., 2008, pursuant to 19 CFR 351.524(b)(2).¹¹⁵

To allocate the 2007 benefits, we used the discount rates described above in the section “Subsidies Valuation Information” to calculate the amount of the benefit allocable to the POI. To calculate the net subsidy rate attributable to CS Wind, we divided the benefit by total sales, as described in the “Cross-Ownership” section. On this basis, we preliminarily determine a countervailable subsidy rate of 0.14 percent ad valorem for CS Wind.¹¹⁶

Additionally, the GOC reported that, pursuant to the “Announcement of Ministry of Finance, China Customs, and State Administration of Taxation,” No. 43 (2008), the VAT exemption was terminated.¹¹⁷ Under 19 CFR 351.526(a)(1) and (2), the Department may take a program-wide change to a subsidy program into account in establishing the cash deposit rate if it determines that subsequent to the POI, but before the preliminary determination, a program-wide change occurred and the Department is able to measure the change in the amount of countervailable subsidies provided under the program in question. With regard to this program,

¹¹³ See 19 CFR 351.524(b).

¹¹⁴ Id.

¹¹⁵ See CS Wind’s Preliminary Calculations.

¹¹⁶ Id.

¹¹⁷ See GOC’s IQR at 90-91.

we preliminarily determine that a program-wide change has not occurred. Under 351.526(d)(1), the Department will only adjust the cash deposit rate of a possibly terminated program if there are no residual benefits. However, this program still provides for residual benefits because import tariff and VAT exemptions were provided for the importation of capital equipment and, thus, those exemptions are treated as non-recurring subsidies pursuant to 19 CFR 351.524(c)(2)(iii). This decision is consistent with the Department's approach to this program in prior PRC proceedings.¹¹⁸

E. Provision of Hot-Rolled Steel for LTAR

The Department is investigating whether GOC authorities provided HRS to producers of wind towers for LTAR. As instructed in the Department's questionnaires, the respondent companies identified the suppliers and producers from whom they purchased HRS during the POI. In addition, they reported the date of payment, quantity, unit of measure, and purchase price for the HRS purchased during the POI.

As discussed above under "Use of Facts Otherwise Available and Adverse Inferences," we are finding, as AFA, that all of the producers of HRS purchased by the respondents during the POI are "authorities" within the meaning of section 771(5)(B) of the Act. Therefore, we preliminarily determine that the HRS producers which are majority-owned by the government are "authorities" under section 771(5) of the Act. As a result, we preliminarily determine that HRS supplied by companies deemed to be government authorities constitute a financial

¹¹⁸ See, e.g., Drill Pipe From the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination, 76 FR 1971 (January 11, 2011) (Drill Pipe from the PRC), and accompanying Issues and Decision Memorandum (Drill Pipe Decision Memorandum) at "Import Tariff and VAT Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries."

contribution in the form of a governmental provision of a good under section 771(5)(D)(iii) of the Act and that the respondents received a benefit to the extent that the price they paid for HRS produced by these suppliers was for LTAR. See sections 771(5)(D)(iv) and 771(5)(E)(iv) of the Act.

As explained above in “Use of Facts Otherwise Available and Adverse Inferences,” we preliminarily determine that the GOC has failed to act to the best of its ability in terms of providing the Department with the information it requested concerning the ownership of the firms that produced the HRS purchased by respondents during the POI. Specifically, in many instances, the GOC failed to provide any of the requested ownership information. In one instance, the GOC provided basic ownership information (e.g., business registration license and articles of association) but failed to respond to questions concerning the extent to which the owners of the HRS producer were CCP officials and the extent to which CCP officials rendered the HRS producer a government authority. Thus, pursuant to section 776(b) of the Act, we are assuming that all of the HRS producers were government authorities that provided a financial contribution in the form of a provision of a good and that the respondents received a benefit to the extent that the price they paid for HRS produced by government authorities was for LTAR. See sections 771(5)(D)(iii) and 771(5)(E)(iv) of the Act.

Under 19 CFR 351.511(a)(2), the Department sets forth the basis for identifying appropriate market-determined benchmarks for measuring the adequacy of remuneration for government-provided goods or services. These potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation (e.g., actual sales, actual imports or competitively run government auctions) (tier

one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) an assessment of whether the government price is consistent with market principles (tier three). As provided in our regulations, the preferred benchmark in the hierarchy is an observed market price from actual transactions within the country under investigation.¹¹⁹ This is because such prices generally would be expected to reflect most closely the prevailing market conditions of the purchaser under investigation.

Based on the hierarchy established above, we must first determine whether there are market prices from actual sales transactions involving Chinese buyers and sellers that can be used to determine whether the GOC authorities sold HRS to the respondents for LTAR. Notwithstanding the regulatory preference for the use of prices stemming from actual transactions in the country, where the Department finds that the government provides the majority, or a substantial portion of, the market for a good or service, prices for such goods and services in the country will be considered significantly distorted and will not be an appropriate basis of comparison for determining whether there is a benefit.¹²⁰

In its initial questionnaire response, the GOC provided information on the amount of total HRS production; and amount of HRS produced by SOEs in the PRC.¹²¹ Using this data, we derived the ratio of HRS produced by SOEs during the POI (68.34 percent). Consequently, because of the government's overwhelming involvement in the HRS market, the use of private producer prices in the PRC would be akin to comparing the benchmark to itself (i.e., such a

¹¹⁹ See also Softwood Lumber Decision Memorandum at "Market-Based Benchmark."

¹²⁰ See Countervailing Duties: Final Rule, 63 FR 65348, 65377 (November 25, 1998).

¹²¹ See GOC's IQR at page 11.

benchmark would reflect the distortions of the government presence).¹²² As we explained in

Softwood Lumber from Canada:

Where the market for a particular good or service is so dominated by the presence of the government, the remaining private prices in the country in question cannot be considered to be independent of the government price. It is impossible to test the government price using another price that is entirely, or almost entirely, dependent upon it. The analysis would become circular because the benchmark price would reflect the very market distortion which the comparison is designed to detect.¹²³

For these reasons, prices stemming from private transactions within the PRC cannot give rise to a price that is sufficiently free from the effects of the GOC's actions and, therefore, cannot be considered to meet the statutory and regulatory requirement for the use of market-determined prices to measure the adequacy of remuneration.

Given that we have preliminarily determined that no tier one benchmark prices are available, we next evaluated information on the record to determine whether there is a tier two world market price available to producers of subject merchandise in the PRC. Turning to tier two benchmarks, i.e., world market prices available to purchasers in the PRC, Petitioner and CS Wind submitted prices that they suggest are appropriate bases for constructing a benchmark. Based on our review of the proposed benchmarks, we are preliminarily relying on prices from MEPS International (MEPS), SteelBenchmarker, and Steel Orbis for hot-rolled plate/sheet.¹²⁴

¹²² See Softwood Lumber Decision Memorandum at "There are no market-based internal Canadian benchmarks" section.

¹²³ Id. at 38-39.

¹²⁴ See Petitioner's April 20, 2012, benchmark data and CS Wind's May 11 and 17, 2012, pre-preliminary determination comments. Petitioner submitted additional benchmark data on May 10, 2012 advocating the Department utilize pricing information from Global Trade Information Services (GTIS). CS Wind's May 11, 2012, submission provided convincing evidence to show that the MEP – World Price data included import prices into the PRC. For the same reasons stated in the Department's tier one discussion, we determine that import prices into the PRC cannot serve as a benchmark. Therefore the Department is excluding Petitioner's April 20, 2012, MEP – World Price data and May 10, 2012, GTIS data from the benchmark. We continue to use as part of the HRS benchmark: MEPS – Nordic, MEPS – EU, MEPS – North America, and MEPS – CIS data submitted in Petitioner's April 20,

Pursuant to 19 CFR 351.511(a)(2)(ii), we are averaging the selected prices. Since ocean freight to the PRC is to be added into the benchmark price (see below), we did not rely on any SteelBenchmarker or MEPS prices price that included ocean freight, thereby ensuring that ocean freight would not be counted twice.

Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under tier one or tier two, the Department will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. Regarding delivery charges, we have added ocean freight to the monthly benchmark prices. With regard to inland freight charges that would be incurred to deliver HRS from the port to the company's facility, we added a freight cost to the benchmark prices used for Titan Companies' benefit calculations. We, however, did not add an inland freight cost to the benchmark prices used for CS Wind's benefit calculations because the company is unable to provide information on the cost to transport either HRS from the port to the facility or the cost to transport wind towers from the facility to the port. For more information on this topic, see Memorandum to the File from Kristen Johnson, Trade Analyst, AD/CVD Operations, Office 3, regarding "CS Wind's Preliminary Calculations" (May 29, 2012).

Concerning VAT and import duties, in its pre-preliminary comments, CS Wind states that it is exempt from paying VAT and import duties on imported inputs that are used in exported products.¹²⁵ Therefore, to determine the price that the company would pay if it imported HRS plate, CS Wind argues that the Department must not add VAT and import duties to the base

2012, benchmark data and CS Wind's May 3, 2011, benchmark submission.

¹²⁵ See CS Wind's Pre-Preliminary Comments (May 11, 2012) at 3-6.

price, i.e., the “delivered price” that CS Wind would pay for imported steel would only include freight. This issue was recently addressed in Cylinders from the PRC, where the Department found that section 351.511(a)(2)(iv) of the regulations is clear in its requirement to use delivered prices which includes all delivery charges and import duties.¹²⁶ In that final determination, the Department discusses that domestic inputs purchased by a firm are delivered prices which include all delivery charges and VAT. Therefore, in order to ensure an “apples-to-apples” comparison between domestic input purchases and the world-market benchmark, the regulations require the use of delivered prices, which include import duties and VAT. CS Wind did not present any arguments in its pre-preliminary comments that warrant the Department to reconsider its position on this issue as outlined in Cylinders from the PRC. As such, for the preliminary calculations in this investigation, we have added to the benchmark prices the applicable duties and VAT for imports of HRS plate, as reported by the GOC.

For a full explanation of how we derived the monthly hot-rolled steel benchmark prices, see CS Wind’s and Titan Companies’ Preliminary Calculations Memoranda. We then compared the monthly benchmark prices to CS Wind’s and Titan Companies’ actual purchase prices, including taxes and delivery charges.

To calculate the benefit, we then compared the benchmark unit prices to the unit prices the respondents paid to domestic suppliers of HRS during the POI that the Department has preliminarily determined constitute government authorities. In instances in which the benchmark unit price was greater than the price paid to GOC authorities, we multiplied the difference by the

¹²⁶ See Cylinders Decision Memorandum at Comment 9.

quantity of HRS purchased from the GOC authorities to arrive at the benefit.

As discussed under “Use of Facts Otherwise Available and Adverse Inferences,” above, the Department is relying on AFA to preliminarily determine that the GOC’s provision of HRS for LTAR is specific because the GOC failed to provide information, which was requested of it on two occasions, regarding the details of the government assistance.

We preliminarily find that the GOC’s provision of HRS for LTAR to be a domestic subsidy as described under 19 CFR 351.525(b)(3). To calculate the net subsidy rate attributable to the Titan Companies, we divided the benefit by total sales in the manner described in the “Cross-Ownership” section. To calculate the net subsidy rate attributable to CS Wind, we divided the benefit by total sales, as described in the “Cross-Ownership” section. On this basis, we preliminarily determine countervailable subsidy rates of 12.63 percent ad valorem for CS Wind and 23.55 percent ad valorem for Titan Companies.¹²⁷

F. Provision of Electricity for LTAR

For the reasons explained in the “Use of Facts Otherwise Available and Adverse Inferences” section above, we are basing our preliminary determination regarding the government’s provision of electricity in part on AFA.

In a countervailing duty case, the Department requires information from both the government of the country whose merchandise is under investigation and the foreign producers and exporters.¹²⁸ When the government fails to provide requested information concerning alleged subsidy programs, the Department, as AFA, typically finds that a financial contribution

¹²⁷ See CS Wind’s and Titan Companies’ Preliminary Calculations Memoranda.

¹²⁸ See Cylinders Decision Memorandum at “Provision of Electricity for LTAR.”

exists under the alleged program and that the program is specific because without the requested information from the government the Department typically cannot determine whether the program was specific within the meaning of section 771(5A) of the Act (e.g., whether the program was contingent on export performance or limited to certain enterprises as a matter of law or in fact).¹²⁹ With regards to benefit, the Department will normally rely on the responsive producer's or exporter's records to determine the existence and amount of the benefit to the extent that those records are useable and verifiable.¹³⁰ On the record of this investigation, the respondents provided data on the electricity consumed and the rates paid during the POI.

We preliminarily determine that the GOC's provision of electricity confers a financial contribution as a provision of a good under section 771(5)(D)(iii) of the Act, and is specific, under section 771(5A)(D)(iii) of the Act because, as discussed in the AFA section above, the GOC failed to provide the requested information so that the Department could make a de facto specificity determination. To determine the existence and amount of any benefit from this program, we used the information provided by the respondents regarding the amounts of electricity that they purchased and the rates they paid for that electricity during the POI.

For determining the existence and amount of any benefit under this program, we have relied on an adverse inference by selecting the highest electricity rates that were in effect during the POI as our benchmarks because of the GOC's failure to act to the best of its ability in providing requested information about its provision of electricity in this investigation. See section 776(b)(4) of the Act. To determine the benchmark, we selected the highest non-seasonal

¹²⁹ Id.

¹³⁰ Id.

provincial rates in the PRC, as provided by the GOC for each electricity category (e.g., “large industry,” “general industry and commerce,” and “base charge” (either maximum demand or transformer capacity) used by the respondents. Additionally, where applicable, we identified and applied the peak, normal, and valley rates within a category. For more information on how the Department selected provincial electricity rates used as benchmark rates in the benefit calculations, see Memorandum to the File from Kristen Johnson, Trade Analyst, AD/CVD Operations, Office 3, regarding “PRC Electricity Benchmark Rates” (May 29, 2012).

Consistent with our approach in Drill Pipe from the PRC,¹³¹ to measure whether the respondents received a benefit under this program, we first calculated the variable electricity costs they paid by multiplying the monthly kilowatt (kWh) consumed at each price category (e.g., peak, normal, and valley, where appropriate) by the corresponding electricity rates charged at each price category by the respective province. Next, we calculated the benchmark variable electricity cost by multiplying the monthly kWh consumed at each price category by the highest electricity rate charged at each price category. To calculate the benefit for each month, we subtracted the variable electricity cost paid by each respondent during the POI from the monthly benchmark variable electricity cost.¹³²

To measure whether the respondents received a benefit with regard to their base rate (i.e., either maximum demand or transformer capacity charge), we first multiplied the monthly base rate charged to the companies by the corresponding consumption quantity. Next, we calculated the benchmark base rate cost by multiplying the companies’ consumption quantities by the

¹³¹ See Drill Pipe Decision Memorandum at “Provision of Electricity for LTAR.”

¹³² See CS Wind’s and Titan Companies’ Preliminary Calculations Memoranda.

highest maximum demand or transformer capacity rate. To calculate the benefit, we subtracted the maximum demand or transformer capacity costs paid by the companies during the POI from the benchmark base rate costs. We then calculated the total benefit received during the POI under this program by summing the benefits stemming from the respondents' variable electricity payments and base rate payments.¹³³

CS Wind and Titan Companies also reported efficiency adjustment fees and other discount and charges that were part of their electricity payments during the POI. Consistent with the Department's approach in Steel Wire from the PRC, we have included the adjustment fees, discounts, and other charges into the preliminary benefit calculations for this program.¹³⁴ For a more detailed explanation of the adjustment fees, discounts, and other charges and how they are incorporated into preliminary benefits calculations, see CS Wind's and Titan Companies' Preliminary Calculations Memoranda.

To calculate the net subsidy rate attributable to the Titan Companies, we divided the benefit by total sales in the manner described in the "Cross-Ownership" section. To calculate the net subsidy rate attributable to CS Wind, we divided the benefit by total sales, as described in the "Cross-Ownership" section. On this basis, we preliminarily determine countervailable subsidy rates of 0.29 percent ad valorem for CS Wind and 0.53 percent ad valorem for Titan Companies.¹³⁵

¹³³ Id.

¹³⁴ See Galvanized Steel Wire From the People's Republic of China: Final Affirmative Countervailing Duty Determination, 77 FR 17418 (March 26, 2012) (Steel Wire from the PRC), and accompanying Issues and Decision Memorandum (Steel Wire Decision Memorandum) at Comment 10.

¹³⁵ See CS Wind's and Titan Companies' Preliminary Calculations Memoranda

G. Land Development Program Grant

In response to the Department's inquiry about an item in the company's financial statements, CSWC reported that it received a one-time grant from the Lianyungang Economic and Technological Development Zone (LETDZ) Administration Committee in 2009.¹³⁶ CSWC stated that it received the grant because it established its wind tower and flange plate construction facility in the LETDZ.¹³⁷ CSWC reported that it signed a contract with the LETDZ Administration Committee on December 26, 2007, which was in conjunction with CSWC's purchase of land and investment within the zone.¹³⁸

The GOC did not respond to the Department's request for information regarding this program. See "Use of Facts Otherwise Available and Adverse Inferences" section above.

We preliminarily determine that the grant issued under this program constitutes a financial contribution under section 771(5)(D)(i) of the Act, in the form of a direct transfer of funds, and a benefit under section 771(5)(E) of the Act. As discussed under "Use of Facts Otherwise Available and Adverse Inferences," the Department is relying on AFA to preliminarily determine that this grant program is specific because the GOC failed to submit the requested information regarding the assistance provided under this program so that the Department could determine whether the program was specific under section 771(5A) of the Act.

To calculate the benefit from the grant, we first applied the "0.5 percent expense test" described in 19 CFR 351.524(b)(2). We preliminarily find that the grant amount approved in 2007 is greater than 0.5 percent of the company's total sales for 2007. Because the 2007 grant is

¹³⁶ See CS Wind's First SQR at 2-6.

¹³⁷ Id.

¹³⁸ Id.

a non-recurring benefit consistent with 19 CFR 351.524(c)(2)(iii), we are allocating the benefit over the 12-year AUL in the year in which it was received, i.e., 2009, and applied a discount rate discussed in the “Benchmarks and Discount Rates” section above. To calculate the net subsidy rate attributable to CS Wind, we divided the benefit, allocated to the POI, by total sales, as described in the “Cross-Ownership” section. On this basis, we preliminarily determine that CS Wind received a countervailable subsidy of 0.22 percent ad valorem.¹³⁹

H. Award for Good Performance in Paying Taxes

After the Department inquired about an item in the company’s 2011 financial statement, CSWC reported that it received a grant during the POI from the LETDZ Administration Committee for its good performance in paying taxes for fiscal year 2010.¹⁴⁰ CSWC stated that the grant was award by the LETDZ Administration Committee to the top 20 income taxpayers in the zone for fiscal year 2010 taxes. CSWC added that there is no application process for the receipt of the award; the receipt of the award is determined by a review of the tax records retained at the local state tax bureau.

The GOC did not respond to the Department’s request for information regarding this program. See “Use of Facts Otherwise Available and Adverse Inferences” section above.

We preliminarily determine that the grant issued under this program constitutes a financial contribution under section 771(5)(D)(i) of the Act, in the form of a direct transfer of funds, and a benefit under section 771(5)(E) of the Act. Based on CSWC’s response, the grant is limited to the top 20 income taxpayers located in the LETDZ. As such, we preliminarily

¹³⁹ See CS Wind’s Preliminary Calculations.

¹⁴⁰ See CS Wind’s First SQR at 6-9.

determine that this grant program is de facto specific under section 771(5A)(D)(iii)(I) of the Act.

To calculate the benefit from the grant, we first applied the “0.5 percent expense test” and found that the grant amount approved in 2011 is less than 0.5 percent of CS Wind’s total sales, as described in the “Cross-Ownership” section. As such, we are expensing the grant to the year of receipt, the POI. On this basis, we preliminarily determine that CS Wind received a countervailable subsidy of 0.02 percent ad valorem.¹⁴¹

I. Award for Taicang City to Support Public Listing of Enterprises

Titan Companies reported that the Taicang City government awarded bonus payments to Titan Wind in recognition of the company’s successful listing on the Shenzhen Stock Exchange.¹⁴² The Titan Companies report that the local governments approved and issued the grants to Titan Wind some time after the application was submitted.

We preliminarily determine that the grants received by Titan Wind constitute a financial contribution and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Regarding specificity, because the grants were expressly limited to firms undertaking an IPO, we find the grants to be specific under section 771(5A)(D)(i) of the Act.

To calculate the benefit from the grant, we first applied the “0.5 percent expense test” described in 19 CFR 351.524(b)(2). We preliminarily find that the total grant amount approved in 2010 is greater than 0.5 percent of the company’s total sales for 2010. Because the 2010 grant is a non-recurring benefit consistent with 19 CFR 351.524(c)(2)(iii), we are allocating the benefit over the 12-year AUL in the years in which it was received, 2010 and 2011, and applied a

¹⁴¹ See CS Wind’s Preliminary Calculations.

¹⁴² See Titan Companies’ SQR (April 27, 2012) at 7.

discount rate discussed in the “Benchmarks and Discount Rates” section above. We then divided the benefit amount attributed to the POI by Titan Companies’ total consolidated sales for 2011 (less inter-company sales). On this basis, we preliminarily determine that Titan Companies received a net countervailable subsidy of 0.07 percent ad valorem.¹⁴³

J. Awards for Taicang City to Promote Development of Industrial Economy for the Three-year Period of 2010 to 2012

After the Department inquired about an item in the company’s financial statements, Titan Companies reported that Titan Wind received a bonus for doubling output in three years. The Titan Companies stated Titan Wind applied for and the local government approved the amount for the program some time after the application.¹⁴⁴

We preliminarily determine that the grants received by Titan Wind constitute a financial contribution and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. As discussed under “Use of Facts Otherwise Available and Adverse Inferences,” above, the Department is relying on AFA to preliminarily determine that the grant program is specific because the GOC failed to submit the requested information regarding grants provided under the program so that the Department could determine whether the program was specific under section 771(5A) of the Act.

The grant that Titan Wind received during the POI was less than 0.5 percent of Titan Companies’ total sales in the manner described in the “Cross-Ownership” section. Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed the grant amounts to the POI. On this basis, we preliminarily determine that Titan Companies received a countervailable subsidy of 0.02 percent

¹⁴³ See Titan Companies’ Preliminary Calculations.

¹⁴⁴ See Titan Companies’ SQR at 47-48.

ad valorem.¹⁴⁵

K. Special Funds for Development of Science and Technology

After the Department inquired about an item in the company's financial statements, Titan Companies reported that Titan Wind received a benefit from the government's science and technology development fund.¹⁴⁶

We preliminarily determine that the grants received by Titan Wind constitute a financial contribution and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. As discussed under "Use of Facts Otherwise Available and Adverse Inferences," above, the Department is relying on AFA to preliminarily determine that the grant program is specific because the GOC failed to submit the requested information regarding grants provided under the program so that the Department could determine whether the program was specific under section 771(5A) of the Act.

The grant that Titan Wind received during the POI was less than 0.5 percent of Titan Companies' total sales in the manner described in the "Cross-Ownership" section. Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed the grant amounts to the POI. On this basis, we preliminarily determine that Titan Companies received a countervailable subsidy of 0.01 percent ad valorem.¹⁴⁷

L. Award for Baotou Rare Earth High and New Technology Industrial Development Zone for Excellent Construction Projects

After the Department inquired about an item in the company's financial statements, Titan

¹⁴⁵ See Titan Companies' Preliminary Calculations.

¹⁴⁶ See Titan Companies' SQR at 47-48.

¹⁴⁷ See Titan Companies' Preliminary Calculations.

Companies reported that Titan Baotou received a reward for “excellent construction projects.”¹⁴⁸ We preliminarily determine that the grants received by Titan Wind constitute a financial contribution and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. As discussed under “Use of Facts Otherwise Available and Adverse Inferences,” above, the Department is relying on AFA to preliminarily determine that the grant program is specific because the GOC failed to submit the requested information regarding grants provided under the program so that the Department could determine whether the program was specific under section 771(5A) of the Act.

The grant that Titan Baotou received during the POI was less than 0.5 percent of Titan Companies’ total sales in the manner described in the “Cross-Ownership” section. Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed the grant amounts to the POI. On this basis, we preliminarily determine that Titan Companies received a countervailable subsidy of 0.02 percent ad valorem.¹⁴⁹

II. Program for which More Information Is Necessary

1. Tax Offsets for Research and Development

According to Titan Companies’ April 3, 2012, initial questionnaire response, Titan Wind received a similar benefit to “Tax Offsets for Research and Development by FIEs,” under the EITL during the POI. Because we lack complete information on this program, we have requested additional information from the GOC and the current due date for the information is

¹⁴⁸ See Titan Companies’ SQR at 47-48.

¹⁴⁹ See Titan Companies’ Preliminary Calculations.

May 30, 2012, after the preliminary determination.¹⁵⁰ We requested information on the program's purpose, the laws/regulations related to the program, government agencies that administer the program, the application process, eligibility criteria, and specificity data.¹⁵¹

III. Programs Preliminarily Determined Not To Provide Countervailable Benefits During the POI

1. Production Expansion and Stable Employment Award

In response to the Department's inquiry about an item in the company's financial statement, CSWC reported that it was approved for and received a grant from the financial bureau of the LETDZ Administration Committee in 2009.¹⁵² CSWC stated that the grant was related to the company's production and export expansion in 2009 compared to its operations in 2008.

We preliminarily find that the award represents less than 0.5 percent of the company's total export sales 2009. As such, this grant is expensed in 2009, the year of receipt, under 19 CFR 351.524(b)(2), and not allocable to the POI.

Consistent with our past practice, we therefore have not included this program in our preliminary net countervailing duty rate calculations. See, e.g., Coated Paper Decision Memorandum at "Analysis of Programs, Programs Determined Not To Have Been Used or Not To Have Provided Benefits During the POI for GE," and Final Results of Countervailing Duty Administrative Review: Low Enriched Uranium from France, 70 FR 39998 (July 12, 2005) (Uranium from France), and accompanying Issues and Decision Memorandum (Uranium

¹⁵⁰ See Department's Extension Letter to the GOC (May 22, 2012).

¹⁵¹ See Department's Third Supplemental Questionnaire to the GOC (May 16, 2012).

¹⁵² See CS Wind's First SQR at 11-14.

Decision Memorandum) at “Purchases at Prices that Constitute More than Adequate Remuneration,” (citing Notice of Final Results of Countervailing Duty Administrative Review and Rescission of Certain Company-Specific Reviews: Certain Softwood Lumber Products From Canada, 69 FR 75917 (December 20, 2004), and accompanying Issues and Decision Memorandum at “Other Programs Determined to Confer Subsidies”).

2. Titan Companies’ Other Subsidies Discovered During the Investigation

After the Department inquired about several items in each company’s financial statement, Titan Companies reported that it received a total of 18 grants from various governmental entities. Titan Companies reported that Titan Suzhou received a grant in 2009; Titan Wind received 15 grants in 2009, 2010, and 2011; Titan Baotou received a grant in 2011; and Shanghai Tianshen received a grant in 2010 and 2011. Those grants for which we preliminarily find a countervailable benefit are described above. Those grants for which we preliminarily find that the award represents less than 0.5 percent of Titan Companies’ total sales, as described in the “Cross-Ownership” section, for the year of approval are expensed to the year of receipt, under 19 CFR 351.524(b)(2), and not allocable to the POI, are listed below:

- a) Bonus for quality system authentication (Award of Taicang City for Cell Projects of Eco-City Construction (Environmental System Certification Award))
- b) Encouragement for expanding domestic market Awards of Expanding Domestic Demands and Encouraging Consumption
- c) Bonus for foreign trade promotion (Awards of Taicang City to Promote Foreign Trade Development)
- d) Support fund for small-and-medium-sized enterprises (Support and Development Funds of Taicang City for Small and Medium-Sized Enterprises (SMEs))
- e) Bonus for significant increase in tax payment (Awards of Taicang City to Encourage Enterprise Development and Tax Payment)
- f) Bonus for environment-friendly production (Green Production Awards)
- g) Support fund (Industry Support Funds of Huangpu District)
- h) Energy saving fund (Special Funds for Energy Conservation)

- i) Patent promotion fund (Patent Special Funds of Taicang City)
- j) Science and technology development fund (Special Funds of Jiangsu Province for Science and Technology Support Program)
- k) Support fund for industrial upgrading (Special Funds of Jiangsu Province for Industry Transformation and Upgrading)
- l) Bonus for Obtaining Patent.

IV. Programs Preliminarily Determined To Be Not Used

We preliminarily determine that the respondents did not apply for or receive benefits during the POI under the programs listed below:

- 1. Export Product Research and Development Fund
- 2. Subsidies for Development of “Famous Brands” and “China World Top Brands”
- 3. Sub-Central Government Subsidies for Development of “Famous Brands” and “China World Top Brands”
- 4. Special Energy Fund of Shandong Province
- 5. National Defense Science and Technology Industry Grants for the Wind Power Equipment Industry
- 6. Funds for Outward Expansion of Industries in Guangdong Province
- 7. Renewable Energy Development Fund
- 8. Special Fund for Wind Power Manufacturing Grants
- 9. Government Provision of Aluminum for LTAR
- 10. Government Provision of Land-Use Rights to State-Owned Enterprises for LTAR
- 11. Government Provision of Land-Use Rights by the Hunan Province Government for LTAR
- 12. Income Tax Reductions for Export-Oriented FIEs
- 13. Local Income Tax Exemption and Reduction Programs for “Productive” FIEs
- 14. Tax Reductions for FIEs Purchasing Chinese-Made Equipment
- 15. Tax Refunds for Reinvestment of FIE Profits in Export-Oriented Enterprises
- 16. Preferential Tax Programs for FIEs Recognized as High or New Technology Enterprises
- 17. Tax Offsets for Research and Development for FIEs
- 18. City Tax and Surcharge Exemptions for FIEs
- 19. Tax Reductions for High and New-Technology Enterprises Involved in Designated Projects
- 20. Preferential Income Tax Policy for Enterprises in the Northeast Region
- 21. Foregiveness of Tax Arrears for Enterprises Located in the Old Industrial Bases of Northeast China
- 22. Hunan Province Special Fund for Renewable Energy Development
- 23. VAT Rebates on FIE Purchases of Chinese-Made Equipment
- 24. VAT and Tariff Exemptions for Purchases of Fixed Assets Under the Foreign

- Trade Development Fund Program
- 25. Tax Benefits for Imported Large Power Wind Turbine System Key Components and Raw Materials
- 26. Export Credit Subsidy Programs
- 27. Export Guarantees and Insurance for Green Technology

VERIFICATION

In accordance with section 782(i)(1) of the Act, we intend to verify the information submitted by CS Wind and Titan Companies as well as information submitted by the GOC prior to making our final determination.

SUSPENSION OF LIQUIDATION

In accordance with section 705(c)(1)(B)(i)(I) of the Act, we have calculated an individual countervailable subsidy rate for each respondent. Section 705(c)(5)(A)(i) of the Act states that for companies not individually investigated, we will determine an all others rate equal to the weighted average of the countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero and de minimis countervailable subsidy rates, and any rates based entirely on AFA under section 776 of the Act.

Notwithstanding the language of section 705(c)(5)(A)(i) of the Act, we have not calculated the “all others” rate by weight averaging the rates of CS Wind and Titan Companies, because doing so risks disclosure of proprietary information. Therefore, for the all others rate, we have calculated a simple average of the two responding firms’ rates.

We preliminarily determine the total countervailable subsidy rates to be as follows.

Company	Subsidy Rate
CS Wind China Co., Ltd., CS Wind Tech (Shanghai) Co., Ltd., and CS Wind Corporation (collectively, CS Wind)	13.74 percent <u>ad valorem</u>
Titan Wind Energy (Suzhou) Co., Ltd. (Titan Wind), Titan Lianyungang Metal Products Co. Ltd. (Titan Lianyungang), Baotou Titan Wind Energy Equipment Co., Ltd. (Titan Baotou), and Shenyang Titan Metal Co., Ltd. (Titan Shenyang)(collectively, Titan Companies)	26.00 percent <u>ad valorem</u>
All Others Rate	19.87 percent <u>ad valorem</u>

In accordance with sections 703(d)(1)(B) and (2) of the Act, we are directing CBP to suspend liquidation of all entries of the subject merchandise from the PRC that are entered or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the Federal Register, and to require a cash deposit for such entries of the merchandise in the amounts indicated above.¹⁵³

ITC NOTIFICATION

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

In accordance with section 705(b)(2) of the Act, if our final determination is affirmative,

¹⁵³ See Modification of Regulations Regarding the Practice of Accepting Bonds During the Provisional Measures Period in Antidumping and Countervailing Duty Investigations, 76 FR 61042 (October 3, 2011).

the ITC will make its final determination within 45 days after the Department makes its final determination.

DISCLOSURE AND PUBLIC COMMENT

In accordance with 19 CFR 351.224(b), we will disclose to the parties the calculations for this preliminary determination within five days of its announcement. We will notify parties of the schedule for submitting case briefs and rebuttal briefs, in accordance with 19 CFR 351.309(c) and 19 CFR 351.309(d)(1), respectively. A list of authorities relied upon, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Section 774 of the Act provides that the Department will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice, pursuant to 19 CFR 351.310(c). Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If a request for a hearing is made in this investigation, we intend to hold the hearing two days after the deadline for submission of the rebuttal briefs, pursuant to 19 CFR 351.310(d). Any such hearing will be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Parties should confirm by telephone, the date, time, and place of the hearing 48 hours before the scheduled

time.

This determination is issued and published pursuant to sections 703(f) and 771(i) of the Act.

Paul Piquado
Assistant Secretary
for Import Administration

May 29, 2012 _____
Date

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